

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
:
v. : 11-CR-639 (JFB)
:
GERALD MACHACEK, : October 16, 2012
:
Defendant. : Central Islip, NY
:
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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: LORETTA LYNCH, ESQ.
UNITED STATES ATTORNEY
BY: BURTON RYAN, ESQ.
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For the Defendant: ANTHONY LaPINTA, ESQ.

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1 THE CLERK: Calling case 11-CR-639, U.S.A.
2 v. Gerald Machacek. Counsel, please state your
3 appearance for the record.

4 MR. RYAN: For the government, your Honor,
5 Burton Ryan.

6 THE COURT: Good afternoon, Mr. Ryan.

7 MR. LaPINTA: Good afternoon, your Honor.
8 For Mr. Machacek, Anthony LaPinta.

9 THE COURT: Good afternoon, Mr. LaPinta.
10 And the defendant is present as well. I apologize for
11 the delay but we are ready to proceed. As you can see,
12 we don't have the court reporter here, so if everyone
13 could just remain seated and make sure that you're
14 using the mics, so that we have a good record of the
15 proceeding, that would be great.

16 Okay. My understand is your client has an
17 application today, Mr. LaPinta.

18 MR. LaPINTA: Yes, your Honor.

19 THE COURT: What is that?

20 MR. LaPINTA: The application is that he
21 will be entering a plea of guilty --

22 THE COURT: Just pull the mic a little
23 closer to you.

24 MR. LaPINTA: I'm sorry, sir. The
25 application is that my client will be pleading guilty

1 to Counts 1, 6 and 11 of the superseding indictment.

2 THE COURT: Okay. And that's pursuant to an
3 agreement with the government?

4 MR. LaPINTA: Yes, sir.

5 THE COURT: Okay.

6 Is that correct, Mr. Machacek?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Okay. Before I can accept your
9 guilty plea to those counts, Mr. Machacek, I have to
10 ask you a number of question, so that I can establish
11 to my satisfaction that you wish to plead guilty
12 because you are guilty and not for some other reason.
13 I also need to establish that you know what rights
14 you're giving up by pleading guilty.

15 So I'm going to ask you a series of
16 questions. If you don't understand one of my
17 questions, let me know and I'll rephrase it, or if you
18 want to speak to Mr. LaPinta at any time for any
19 reason, let me know and I'll give you as much time as
20 you need to do that, okay?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Okay. Are you speak, read and
23 understand English?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Okay. If you could please raise

1 your right hand.

2 (Defendant is sworn.)

3 THE COURT: Okay, you can put your hand
4 down. Having been sworn, your answers to my questions
5 will be subject to the penalties of perjury or making a
6 false statement, if you do not answer truthfully.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Could you state your full name
10 for the record?

11 THE DEFENDANT: Gerald Machacek.

12 THE COURT: How old are you, Mr. Machacek?

13 THE DEFENDANT: 43.

14 THE COURT: You said you're 43?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. And how far did you go in
17 school?

18 THE DEFENDANT: High school to college, some
19 college.

20 THE COURT: Some college?

21 THE DEFENDANT: Yes.

22 THE COURT: Is that yes? I didn't hear you.

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Are you now or have you
25 recently been under the care of a doctor or a

1 psychiatrist?

2 THE DEFENDANT: No.

3 THE COURT: Have you ever been hospitalized
4 or treated for any mental illness, including any type
5 of addiction, such as drug or alcohol addiction?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Have you taken any drugs,
8 medicine or pills or any alcoholic beverages in the
9 past 48 hours?

10 THE DEFENDANT: No.

11 THE COURT: Is your mind clear today?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand what you're
14 doing today?

15 THE DEFENDANT: Yes.

16 THE COURT: Do either counsel have any doubt
17 as to the defendant's competence to plead at this time?

18 MR. LaPINTA: I have no doubt.

19 THE COURT: Mr. Ryan?

20 MR. RYAN: None, Judge.

21 THE COURT: Okay. On the basis of Mr.
22 Machacek's responses to my questions, my observations
23 of his demeanor and the representations of counsel, I
24 find that he is fully competent to enter an informed
25 plea at this time.

1 Mr. Machacek, have you had sufficient time
2 to discuss this case with Mr. LaPinta, including any
3 possible defenses that you might have to the charges to
4 which you're pleading guilty?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are you satisfied with your
7 attorney's representation?

8 THE DEFENDANT: Yes, very.

9 THE COURT: Okay. I'm now going to describe
10 to you certain rights that you have under the
11 Constitution and laws of the United States. You're
12 giving up these rights by pleading guilty, so please
13 listen carefully.

14 Under the Constitution and laws of the
15 United States, you're entitled to a speedy and public
16 trial by a jury, on the charges contained in
17 superseding indictment 11-639 (S-3).

18 Do you understand that?

19 THE DEFENDANT: Yes, Judge.

20 THE COURT: At the trial, you would be
21 presumed to be innocent and the government would be
22 required to prove your guilt. They would have the
23 burden of proof by competent evidence beyond a
24 reasonable doubt, before you could be found guilty

25 Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: A jury of twelve people would
3 have to agree unanimously that you were guilty and you
4 would not have to prove that you were innocent, if you
5 were to go to trial.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: During the trial -- at the trial
9 and at every stage of your case, you would be entitled
10 to be represented by a lawyer, and if you could not
11 afford a lawyer, one would be appointed at public
12 expense, free of cost, to represent you at each and
13 every stage of the criminal proceeding.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: During the trial, the government
17 would have to call the witnesses to court to testify in
18 your presence. Your lawyer could cross-examine the
19 witnesses for the government, your lawyer could object
20 to evidence offered by the government, and your lawyer
21 could offer evidence on your own behalf, if you so
22 desired. You'd also have the right to have subpoenas
23 issued or other process used to compel witnesses to
24 testify in your defense.

25 Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: At the trial, although you would
3 have the constitutional right to testify if you chose
4 to do so, you also have the constitutional right not to
5 testify. And if you decided not to testify, no one,
6 including the jury, could draw any adverse inference or
7 suggestion of guilt from the fact that you did not
8 testify.

9 Do you understand that?

10 THE DEFENDANT: Yes, Judge.

11 THE COURT: If you're convicted at trial,
12 you would have the right to appeal the verdict.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Even now, as you're offering to
16 enter this guilty plea, you have the right to change
17 your mind, continue in a plea of not guilty, and go to
18 trial on the charges contained in superseding
19 indictment (S-3).

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: If you plead guilty and if I
23 accept your plea, you will give up your right to a
24 trial and all the other rights that I've just discussed
25 with you, other than your right to an attorney, because

1 you have the right to an attorney regardless of whether
2 or not you plead guilty.

3 However, if you plead guilty, there will be
4 no trial and I will enter a judgment of guilty and
5 sentence you on the basis of your guilty plea, after
6 I've considered the presentence report and the
7 submissions and arguments by both sides, in connection
8 with your sentencing. There will be no appeal on the
9 question of whether you did or did not commit the
10 crimes to which you are pleading guilty.

11 Do you understand that?

12 THE DEFENDANT: Yes, Judge.

13 THE COURT: If you plead guilty, you also
14 have to give up your right not to incriminate yourself
15 because in a moment, I'm going to ask you questions
16 about what you did, in order to satisfy myself that you
17 are guilty as charged, and you will have to admit and
18 acknowledge your guilt under oath.

19 Do you understand that?

20 THE DEFENDANT: Yes, Judge.

21 THE COURT: Mr. Machacek, are you willing to
22 give up your right to a trial and the other rights that
23 I've just discussed with you?

24 THE DEFENDANT: Yes, Judge.

25 THE COURT: Let me just summarize the

1 charges to which you're pleading guilty, to make sure
2 that you understand them. I know you've obviously
3 discussed this with your attorney, but let me just
4 summarize them.

5 You're pleading guilty to Count 1, which is,
6 in summary, a robbery conspiracy, and it charges that
7 between approximately April 1st of 2000 and April 10th -
8 - excuse me, April 1st of 2010, that you, in the
9 district, along with others, knowingly and
10 intentionally conspired to commit robbery of illegal
11 narcotics traffickers and business owners in Brooklyn,
12 Queens, the Bronx, Nassau and Suffolk, in violation of
13 Section 1951 of Title 18.

14 Count 6 charges you with conspiracy to
15 launder money. In summary, again, it charges that
16 between April 1st of 2008 and October 26th of 2011, in
17 this district and elsewhere, you along with others
18 knowingly and intentionally conspired to conduct
19 financial transactions in and affecting interstate
20 commerce, specifically money obtained from the sale of
21 controlled substances and robbery proceeds. And
22 knowing that that property involved the proceeds from
23 this unlawful activity, you engaged in these
24 transactions with the intent to promote the carrying on
25 of the specified unlawful activity, in violation of the

1 money laundering statutes under federal law that are
2 stated in the indictment.

3 And finally, Count 11 charges you with the
4 use of a firearm during a crime of violence,
5 specifically that on or about January 29th of 2009, in
6 this district, that you with others knowingly and
7 intentionally used and carried a black handgun during
8 and in connection with the robberies in Count 1 to
9 Count 10, and that you knowingly and intentionally
10 possessed the gun in furtherance of those crimes of
11 violence, in violation of Section 924(c) of Title 18.

12 Do you understand, in summary, that that's
13 what the indictment charges you with?

14 THE DEFENDANT: Yes, Judge.

15 THE COURT: Let me just briefly go through
16 the elements of that crime that the government would
17 have to prove to the jury beyond a reasonable doubt, if
18 you were to go to trial on those charges. Obviously,
19 you're giving up your right to have the jury make the
20 findings with respect to these elements, but I want to
21 make sure that you understand what those elements are.

22 First, with respect to the Hobbs Act robbery
23 conspiracy, the government would have to prove that
24 there was an agreement between two or more persons, not
25 including law enforcement people, people acting at the

1 direction of law enforcement, that there was an
2 agreement to commit robbery. They would have to prove
3 the elements of the objective of robbery to the jury
4 specifically under federal law:

5 First, that the defendant knowingly obtained
6 or took the personal property of another or from the
7 presence of another;

8 second, that you took this property against
9 the victim's will, by actual or threatened force,
10 violence or fear of injury, whether immediately or in
11 the future;

12 and third, that the obtaining of the
13 property by force as described affected interstate
14 commerce in some way.

15 So it would have to prove each of the
16 elements of the objective of that conspiracy, and then
17 they would have to prove that you knowingly and
18 intentionally joined or participated in that conspiracy
19 to commit robbery or to bring about that objective, and
20 that it occurred on or about the dates of the
21 indictment in this district. Those would be the
22 elements for Count 1.

23 With respect to Count 6, the conspiracy to
24 launder money, again, because it's a conspiracy, they
25 would have to prove two or more people, not at the

1 direction of law enforcement, agreed to commit the
2 crime of money laundering. They would have to prove
3 each of the elements of that crime of money laundering
4 to the jury. This is under Section 1956(a)(1)(A)(i).

5 Specifically, they would have to prove first
6 that there were financial transactions that were
7 conducted in and affecting interstate commerce.
8 Specifically here, we're talking about money that they
9 allege was from the sale of controlled substances and
10 robbery proceeds.

11 And they would have to prove that the
12 transactions involved the proceeds of these specified
13 unlawful activities, so they would have to prove that
14 the proceeds were from narcotics trafficking, in
15 violation of the federal narcotics laws that are stated
16 in the indictment, as well as robbery, in violation of
17 Section 1951 that I've already described to you.

18 And the next element of that crime is that
19 you must know that the property involved in the
20 transactions in fact represented the proceeds of that
21 unlawful activity.

22 And then the last element is that the
23 transaction as described was engaged in with the
24 attempt to promote the carrying on of the specified
25 unlawful activity.

1 So they would have to prove all of the
2 elements of money laundering with respect to the
3 conspiracy, and then again, they would have to prove
4 that you knowingly and intentionally joined and
5 participated in that conspiracy to launder the proceeds
6 of the robbery and narcotics offenses, and that it
7 occurred -- your participation in that conspiracy
8 occurred on or about the dates of the indictment in
9 this district.

10 Finally, with respect to Count 11, the use
11 of a firearm during a crime of violence:

12 First, they would have to prove the
13 underlying crime of violence, all of the elements of
14 the underlying crime of violence, that is Count 1 or
15 Count 10, which is a particular robbery, the January
16 29th, 2009 robbery. They would have to prove the
17 elements of robbery as I've described them to you, that
18 that occurred -- that on or about January 29th, 2009,
19 that a robbery occurred, with all of the elements that
20 I've previously described.

21 And then they would have to prove that you
22 knowingly and intentionally used and carried a firearm
23 in connection with the robbery, and that you knowingly
24 and intentionally possessed that firearm in furtherance
25 of the robbery.

1 So they would have to prove all of those
2 elements to the jury beyond a reasonable doubt. Again,
3 they would have to prove that it occurred on or about
4 January 29th of 2009, in this district.

5 Do you understand that if you were to go to
6 trial, the government would have to prove all those
7 elements to the jury beyond a reasonable doubt, and by
8 pleading guilty, you're giving up your right to have
9 them do so?

10 THE DEFENDANT: Yes, Judge.

11 THE COURT: Let me review with you now the
12 maximum penalties as well as any mandatory minimum
13 penalties for the crimes to which you're pleading
14 guilty.

15 Count 1, the conspiracy to commit robbery,
16 carries a maximum term of imprisonment of twenty years.
17 There is no minimum term of imprisonment. There is a
18 maximum supervised release term of three years that
19 would follow any term of imprisonment.

20 There are conditions that are attached to
21 supervised release. If you violate any of those
22 conditions, you can be sentenced to up to two years
23 additional in jail, without credit for pre-release
24 imprisonment or time previously served on post-release
25 supervision.

1 There is a maximum fine of the greatest of
2 \$250,000 or two times the gross pecuniary gain derived
3 from the offense or two times the gross pecuniary loss
4 to persons other than yourself, resulting from the
5 offense. You are also subject to restitution to the
6 victims of the crime, in an amount to be determined by
7 the Court at sentencing, which is not greater than the
8 dollar amount of the total losses suffered by the
9 victims of the robberies that are part of Count 1.

10 I'll get to this in a moment. In your
11 agreement, you're consenting to have the Court include
12 the losses resulting from any related conduct in the
13 order of restitution, and I'll explain that more in a
14 moment, when I get to your agreement. And, also,
15 restitution with respect to the offense of conviction
16 for this crime is mandatory.

17 There's also a \$100 mandatory special
18 assessment, and you're also subject to criminal
19 forfeiture, which again I'll describe more in
20 connection with your agreement.

21 With respect to Count 6, conspiracy to
22 launder money, the maximum term of imprisonment is
23 twenty years. There is no minimum term of
24 imprisonment.

25 There's a maximum supervised release term of

1 three years, to follow any term of imprisonment. If a
2 condition of release is violated on this count, you may
3 be sentenced to up to two years, without credit for
4 pre-release imprisonment or time previously served on
5 post-release supervision.

6 You're subject to the greater of \$500,000 or
7 twice the value of the funds involved in the money
8 laundering. You're also subject to restitution, in an
9 amount to be determined by the Court. Again,
10 restitution is mandatory. There's a \$100 mandatory
11 special assessment. Again, for this count, you're also
12 subject to criminal forfeiture as well.

13 Finally, with respect to Count 11, the use
14 of a firearm during a crime of violence, there's a
15 mandatory minimum term of imprisonment of five years
16 that must run consecutively to any other sentences
17 imposed, including the sentences imposed on Counts 1
18 and 6.

19 You're also subject on Count 11 to a maximum
20 supervised release term of three years, to follow any
21 term of imprisonment. If a condition of release is
22 violated, you could be sentenced to up to two years
23 additional in jail, without credit for pre-release
24 imprisonment or time previously served on post-release
25 supervision.

1 You're subject on this count to a maximum
2 fine of the greatest of \$250,000 or two times the gross
3 pecuniary gain derived from the offense or two times
4 the gross pecuniary loss to persons other than yourself
5 resulting from the offense.

6 For Count 11, you're also subject to
7 restitution in an amount to be determined by the Court,
8 which is not greater than the dollar amount of the
9 total losses suffered by the victims of the offense in
10 Count 11. Again, you're consenting to have the Court
11 include losses resulting from any related conduct in
12 any order of restitution. You're also subject to a
13 \$100 mandatory special assessment.

14 I want to emphasize to you that the
15 sentences for Counts 1 and 6 may be imposed
16 consecutively. That's within the discretion of the
17 Court. So they could be imposed to run one after the
18 other, and as I told you a moment ago, the sentence
19 imposed for Count 11 must run consecutively. So in
20 total, you're exposing yourself to a maximum, with all
21 the counts combined, of 45 years in jail with a
22 mandatory minimum of five years.

23 Do you understand that those are the
24 applicable mandatory sentence -- those are the
25 applicable maximum sentences as well as the mandatory

1 minimum sentences for the crimes to which you're
2 pleading guilty?

3 THE DEFENDANT: I understand, your Honor.

4 THE COURT: Under the law -- let me just ask
5 you first, are you a United States citizen?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: As a result of your guilty plea,
8 you may lose certain valuable civil rights, such as the
9 right to vote, the right to hold public office, the
10 right to serve on a jury and the right to bear a
11 firearm.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: As part of the plea proceeding,
15 I need to describe to you a summary of how the
16 sentencing process works, just to make sure you
17 understand sentencing. I'm sure Mr. LaPinta has
18 discussed this at length with you, but I'm going to
19 give you a brief summary, just to make sure that you
20 understand.

21 The first thing you need to understand is
22 that there is no such thing as parole in the federal
23 system. It does not exist, so you will not be released
24 from prison any earlier on parole.

25 Second, the determination of what sentence

1 you will receive is to be made by the Court and only
2 the Court. Nothing that your lawyer told you regarding
3 sentencing is binding on the Court. Nothing that the
4 prosecutor may have told you is binding on the Court.
5 Sentencing is up to the Court, and as I said, I will
6 sentence you on the basis of your guilty plea, after
7 I've considered the presentence report and whatever
8 submissions and arguments are made by both sides in
9 connection with your sentencing.

10 The next thing I want to advise you about is
11 that under the current state of the law, before
12 imposing sentence, I am required by law to consider a
13 number of factors, statutory factors about this case,
14 including among others -- I'm not going to describe all
15 of them to you. There's a list of them.

16 Some of the factors are the nature and
17 circumstances of the offense, your history and
18 characteristics, the need for the sentence imposed to
19 reflect the seriousness of the offense, to provide a
20 just sentence that accounts for the need to deter you
21 and others from committing the type of crime for which
22 you're convicted, and as I said, there are a number of
23 other factors as well.

24 One of the other factors I do want to
25 mention to you is something called the sentencing

1 guidelines. These sentencing guidelines are, as the
2 name suggests, a set of guidelines that take into
3 account any criminal history that you have, as well as
4 the relevant criminal conduct that you have committed,
5 and it sets forth a range of imprisonment within which
6 you could be sentenced.

7 I want to emphasize to you that these
8 guidelines are not mandatory, they are only advisory,
9 which means I am not required to impose a sentence
10 within whatever the applicable range may turn out to
11 be. I can sentence you above or below that range,
12 depending upon how I weigh all the factors that I am to
13 consider under the law.

14 Finally, whatever sentence I do ultimately
15 impose in this case, and no matter how happy or unhappy
16 you may be with that sentence, you may not withdraw or
17 get back your guilty plea. In other words, while you
18 may appeal the sentence itself, you may not undue your
19 being found guilty by virtue of your plea here today.

20 Do you understand all those things about
21 sentencing?

22 THE DEFENDANT: Yes, Judge.

23 THE COURT: Have you entered into an
24 agreement with the government?

25 THE DEFENDANT: Yes.

1 THE COURT: I have the original, which I've
2 marked as Court Exhibit 1. Did you sign this today in
3 the presence of Mr. LaPinta?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you read it before you
6 signed it?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you discuss it with him
9 before you signed it?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you fully understand it
12 before you signed it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Okay. I just want to highlight
15 I guess three things, again, just to make sure that you
16 understand. The first thing is the thing I mentioned a
17 moment ago regarding restitution. Normally,
18 restitution can be ordered in connection with the
19 conduct that is the subject of the crime of conviction.
20 It says here in the agreement that you're agreeing to
21 restitution for all relevant conduct that relates to
22 these counts of conviction.

23 So in other words, with respect to
24 robberies, you're agreeing to restitution to all the
25 victims of any robberies that you have been involved

1 in, whether or not you specifically mention it here
2 today when you allocute to the robberies. So you're
3 agreeing that restitution will be ordered to all the
4 victims of the robberies.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: That's part of your agreement.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: The second thing is, with
11 respect to forfeiture, obviously, you're subject to
12 forfeiture as a result of these counts. And as part of
13 your agreement, you're representing that there are no
14 monies or properties that you own or have an interest
15 in that are subject to forfeiture, that you've
16 disclosed all your assets to the government with
17 respect to that.

18 I just want to make sure you understand two
19 things: That failure to disclose the assets or to
20 inform the government of any material changes up until
21 the time of sentencing would constitute, according to
22 your agreement, a breach of the agreement. And should
23 any such assets ultimately be discovered, you're
24 agreeing as part of your -- this agreement to summary
25 forfeiture of whatever property or interest that may

1 be. So there would not be a proceeding with respect to
2 that.

3 The government could breach -- could argue
4 that you've breached your agreement. You would not get
5 an opportunity to withdraw your plea and you would be
6 subjecting yourself to summary forfeiture of that
7 interest as well. This is laid out obviously in more
8 detail in the agreement, but that's I think an accurate
9 summary.

10 Is that correct, Mr. Ryan?

11 MR. RYAN: That's correct, Judge.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And then the last thing I
14 want to point out to you -- it's in paragraph 8. That
15 paragraph says, among other things, that if the U.S.
16 attorney's office determines that you've cooperated
17 fully, that you've provided substantial assistance to
18 law enforcement, and that you otherwise complied with
19 the terms of the agreement, that they will file what's
20 called a 5k1.1 motion with the sentencing court that
21 sets forth the nature and extent of your cooperation.

22 Let me just ask Mr. Ryan -- I just want to
23 clarify this. There's no provision --

24 MR. RYAN: I noticed that myself. We will
25 include --

1 THE COURT: A 3553?

2 MR. RYAN: -- 3553(e) section in there to
3 permit the Court to not only sentence him below the
4 advisory guidelines but also under any mandatory
5 minimum sentence that would otherwise be required by
6 statute.

7 THE COURT: Okay, I'm writing that in and
8 I'm asking everybody just to initial that.

9 And then I'll explain that to you, Mr.
10 Machacek, because I'm sure Mr. LaPinta has discussed
11 with you but I think there's a typographical error.

12 (Pause in Proceedings)

13 THE COURT: The record should reflect that
14 everybody has initialed that change to the agreement,
15 and I'm going to explain it to Mr. Machacek, just to
16 make sure he understands.

17 So if you cooperate fully with the
18 government, provide substantial assistance to law
19 enforcement and comply with the terms of the agreement,
20 they will file a motion under 5k1.1 of the sentencing
21 guidelines as well as 3553(e) that sets forth the
22 nature and extent of the cooperation.

23 That allows the government -- that allows
24 the Court to do two things: One is to go below, if it
25 wishes to, the mandatory minimum sentence that would

1 otherwise apply to this offense, that five-year
2 mandatory minimum. It would also allow the Court to
3 consider in applying the advisory guidelines that
4 cooperation in determining what your sentence is under
5 the advisory guideline range.

6 I want to emphasize a couple of things about
7 that. First of all, as it says here, the decision of
8 whether or not you have met the requirements of this
9 paragraph, whether you cooperated fully, whether you
10 provided substantial assistance and whether you
11 complied with the agreement, is up to the U.S.
12 attorney's office. They decide whether those
13 conditions are met, and if they decide not to file that
14 motion, you do not get an opportunity to get your plea
15 back.

16 The second thing is that even if they do
17 file that motion, that motion doesn't bind me in any
18 way. I can sentence you above or below the mandatory
19 minimum. Whatever I ultimately decide based upon all
20 the factors where to sentence you, that determination
21 is still up to the Court, regardless of any motion that
22 the government may make on your behalf.

23 Do you understand those things?

24 THE DEFENDANT: Yes, Judge.

25 THE COURT: Does this agreement constitute

1 your complete and entire agreement with the government?

2 THE DEFENDANT: Yes.

3 THE COURT: Has anyone offered you any
4 inducements or threatened you or forced you to enter
5 this agreement or to plead guilty?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Has anyone made any promise to
8 you as to what your sentence will be?

9 THE DEFENDANT: No, not at all.

10 THE COURT: Mr. LaPinta, do you know of any
11 valid defense that would prevail at trial or do you
12 know any reason why your client should not be permitted
13 to plead guilty?

14 MR. LaPINTA: I do not know of any valid
15 defenses, your Honor.

16 THE COURT: Okay. Or any other reason why
17 your client should not be permitted to plead guilty?

18 MR. LaPINTA: No.

19 THE COURT: Okay.

20 At this point, I need you to tell me in your
21 own words, Mr. Machacek, what you did that makes you
22 guilty of those counts, if you could just go through
23 them count by count with me, and then I may have some
24 followup questions for you. Go ahead.

25 THE DEFENDANT: Okay, Count 1: Between

1 April 1st, '08 and April 1st, 2010, I conspired with
2 others to obstruct the movement of articles and
3 commodities in commerce by robbing owners of businesses
4 in Queens.

5 THE COURT: Okay, let me just ask a couple
6 of followup questions to that. What type of businesses
7 were you --

8 THE DEFENDANT: It was a medical office and
9 a perfume distributor.

10 THE COURT: A medical office and a perfume
11 distributor?

12 THE DEFENDANT: Yes.

13 THE COURT: And these were in Queens?

14 THE DEFENDANT: Yes.

15 THE COURT: So you planned with others to
16 rob both of those places?

17 THE DEFENDANT: Yes, I was there, yes.

18 THE COURT: And did those robberies take
19 place?

20 THE DEFENDANT: Yes.

21 THE COURT: Were weapons used in those
22 robberies?

23 THE DEFENDANT: Yes.

24 THE COURT: What kind of weapons?

25 THE DEFENDANT: It was a black handgun?

1 THE COURT: In both of them?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. And there were people
4 present during both of those robberies?

5 THE DEFENDANT: Yeah, there was people
6 present, yes.

7 THE COURT: People who worked with those
8 businesses?

9 THE DEFENDANT: Yes.

10 THE COURT: And you took money during those
11 robberies?

12 THE DEFENDANT: My coconspirators did, yeah.

13 THE COURT: Okay. You went in there with
14 other people.

15 THE DEFENDANT: I wasn't in there but they
16 were there with --

17 THE COURT: What was your role?

18 THE DEFENDANT: I was outside.

19 THE COURT: Okay, you were outside. Were
20 you a lookout? What were you doing outside?

21 THE DEFENDANT: Yeah, I was watching the
22 car.

23 THE COURT: Okay. And you understood,
24 obviously, when you went with them that while you were
25 watching the car, they were going to go in and commit

1 the armed robbery of these places?

2 THE DEFENDANT: Yes.

3 THE COURT: And they came out with the
4 proceeds of that?

5 THE DEFENDANT: Yes.

6 THE COURT: And when you joined this
7 conspiracy to commit these robberies with other
8 individuals, you did so knowingly and intentionally?

9 THE DEFENDANT: Yes.

10 THE COURT: You knew it was against the law?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. You can move now to Count
13 6, the money laundering conspiracy.

14 THE DEFENDANT: Okay. On or between April
15 1st, '08 and October 26th, '11, I together with others
16 knowingly conspired to affect interstate commerce by
17 using money obtained from the sale of burglary and
18 robbery proceeds, knowing that the property involved in
19 the transaction represented the proceeds from illegal
20 activities that I committed with others.

21 THE COURT: Before I ask you some followup
22 questions regarding that, what's the government's
23 theory in terms of the promotion? What's the
24 government's theory?

25 MR. RYAN: The government's evidence would

1 be that the proceeds were collected by Mr. Timothy
2 Glass, who sold them and then would use the monies from
3 the proceeds to distribute to the crew members, in
4 order to have them come back for further robberies.

5 THE COURT: So like material articles were
6 sold?

7 MR. RYAN: Material articles were stolen,
8 like the perfume was taken from the perfumery. He
9 would exchange those for cash or sell them and then use
10 the monies to distribute to the robbery crew.

11 THE COURT: Okay.

12 Let me just ask you then a couple of
13 followup questions. So you agreed with others that the
14 property that was taken during robberies would be sold
15 and then the proceeds would be distributed --
16 distributed among the members of the robbery, in order
17 to promote the committing of additional robberies.

18 Is that all accurate?

19 THE DEFENDANT: Yes, Judge.

20 THE COURT: Again, what was your role in
21 connection to that? Were you involved in --

22 THE DEFENDANT: Transporting the stuff, you
23 know, driving them over there and driving some trucks
24 with stolen stuff.

25 THE COURT: Okay. So you drove the truck

1 that had the proceeds from the robbery?

2 THE DEFENDANT: Yes.

3 THE COURT: To a location where they were
4 going to be subsequently sold?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And then those proceeds were
7 distributed among those involved in the robbery?

8 THE DEFENDANT: Yes.

9 THE COURT: And you understood when you
10 agreed to do this that the purpose was to promote the
11 robberies and additional robberies in the future?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And you understood that those
14 things that you were driving in that truck were the
15 proceeds from the robberies themselves?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. And this again took place
18 in Queens, among other places?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Moving to Count 11, use
21 of a firearm, can you tell me what you did in
22 connection with that?

23 THE DEFENDANT: I together with others
24 knowingly -- on 1/29/09, I together with others
25 knowingly and intentionally used a firearm to commit a

1 robbery in a physician's office in Queens.

2 THE COURT: Okay. I know we talked about
3 this I guess a little bit previously, in connection
4 with Count 1. But, again, explain -- your role in
5 connection with this was what? Were you outside on
6 this one?

7 THE DEFENDANT: Yes.

8 THE COURT: So you drove -- you drove them
9 or --

10 THE DEFENDANT: No, I was just a passenger
11 in the car.

12 THE COURT: Okay. And your role was to wait
13 outside as a lookout and watch the car?

14 THE DEFENDANT: Yes.

15 THE COURT: And you knew one of the
16 individuals who went into the physician's office had a
17 gun?

18 THE DEFENDANT: Yes.

19 THE COURT: And was going to commit a
20 robbery?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. Again, the robbery took
23 place and they received proceeds from individuals in
24 that doctor's office?

25 THE DEFENDANT: Yes.

1 THE COURT: Did you knowingly and
2 intentionally aid and assist in the use of this firearm
3 during the robbery?

4 THE DEFENDANT: Yes.

5 THE COURT: And you knew it was against the
6 law?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay.

9 Are there any other questions you want me to
10 put to the defendant?

11 MR. RYAN: No, Judge, I believe all the
12 elements have been established.

13 THE COURT: Okay, can you -- I know you did
14 this a little bit before but can you just summarize
15 what the government's proof would be if the defendant
16 were to go to trial?

17 MR. RYAN: The proof would be that the
18 defendants would meet before these robberies at an
19 apartment in Queens, where guns would be distributed
20 and a plan of action for the particular robbery would
21 be described. This particular defendant did go to at
22 least two robberies in Queens, one the office of -- the
23 house of the perfume distributor, who had the contents
24 and was believed to have a large amount of money in the
25 house. A number of people entered there armed, robbed

1 that individual woman, stole a large amount of her
2 product, proceeds, money and jewelry, and then took it,
3 sold it and distributed it among the crew to pay for
4 that robbery and to promote future robberies.

5 Later on, they went to the doctor's office
6 of one of the -- of Ms. Bedell, who was a
7 coconspirator, and they again distributed guns amongst
8 themselves, drove to the doctor's office and robbed the
9 employees of the doctor's office, taking money, purses
10 and jewelry, and distributed that as well amongst
11 themselves, and sold the non-monetary items and
12 distributed the proceeds.

13 THE COURT: Okay. And the second is the one
14 that is the subject of Count 11?

15 MR. RYAN: Count 11 is the doctor's office,
16 Judge.

17 THE COURT: Okay. And you'd be able to
18 prove that the firearm was used during that robbery?

19 MR. RYAN: There were multiple firearms,
20 including a black handgun, that were distributed and
21 used during that robbery.

22 THE COURT: Okay. And you'd be able to
23 prove that these occurred on or about the dates in the
24 indictment for each of them.

25 MR. RYAN: Correct, Judge.

1 THE COURT: And this is through the victims
2 as well as other witnesses as well?

3 MR. RYAN: It's through victims and
4 coconspirators' evidence.

5 THE COURT: Okay. And with respect to the
6 interstate commerce requirement, what would the
7 government's proof be on that?

8 MR. RYAN: The government's proof would be
9 that many of the items stolen were not manufactured in
10 the State of New York and that the businesses, each of
11 which were involved and affected interstate commerce.

12 THE COURT: Okay. And that would include
13 the proceeds with respect to the money laundering.

14 MR. RYAN: Correct, Judge.

15 THE COURT: Okay.

16 And your client is not contesting the
17 government's ability to prove the interstate commerce
18 requirement; is that correct, Mr. LaPinta?

19 MR. LaPINTA: Yes, your Honor.

20 THE COURT: Is that correct?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay.

23 How do you now plead to Count 1 of
24 superseding indictment (S-3) 11-639, guilty or not
25 guilty? How do you now plead?

1 THE DEFENDANT: Guilty, sir.

2 THE COURT: How do you now plead to Count 6
3 of superseding indictment (S-3), guilty or not guilty?

4 THE DEFENDANT: Guilty, your Honor.

5 THE COURT: And how do you now plead to
6 Count 11 of superseding indictment (S-3), guilty or not
7 guilty?

8 THE DEFENDANT: Guilty, your Honor.

9 THE COURT: Did you do what you're charged
10 with doing in those counts?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Are you pleading guilty because
13 you are guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you pleading guilty
16 voluntarily and of your own free will?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Because you acknowledge
19 that you're guilty as charged in those counts, because
20 you know your rights and are waiving them, because your
21 plea is entering knowingly and voluntarily and
22 supported by an independent basis in fact for each of
23 the elements of the offense, I accept your guilty plea
24 and I adjudge you guilty of Count 1, Count 6 and Count
25 11 of superseding indictment (S-3) 11-639.

1 Do you want me to hold off preparation of
2 the presentence report?

3 MR. RYAN: Yes, Judge. I believe Probation
4 has requested that they all be --

5 THE COURT: Held in abeyance?

6 MR. RYAN: -- held in abeyance. There is a
7 person already assigned working on them, but I believe
8 they're going to try and do them all at once.

9 THE COURT: Okay.

10 Do you agree with that? In other words --

11 MR. LaPINTA: I was hoping we could have it
12 completed sooner than later.

13 THE COURT: Okay. So I'm going to direct
14 that they -- I only do that if there's consent on both
15 sides. If you would prefer to have them start that
16 process --

17 MR. LaPINTA: Yes.

18 MR. RYAN: That's fine, Judge.

19 THE COURT: Okay.

20 MR. RYAN: Because I think Probation will
21 work out its own schedule.

22 THE COURT: Okay. So I'm going to direct
23 that they prepare the presentence report.

24 Do you wish to be present for the interview?

25 MR. LaPINTA: Yes, please.

1 THE COURT: Okay, that will be noted and
2 we'll set sentencing for --

3 THE CLERK: February 15th at 2:00.

4 THE COURT: February 15th, 2013 at 2:00? At
5 2:00 p.m.

6 MR. RYAN: Thank you, Judge.

7 THE COURT: Okay. Anything else?

8 MR. RYAN: That concludes the business,
9 Judge.

10 MR. LaPINTA: No, sir, thank you.

11 THE COURT: Okay, thank you.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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25 ELIZABETH BARRON

November 27, 2012